

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

H&R BLOCK, INC. and HRB
INNOVATIONS, INC.,

Plaintiffs,

v.

BLOCK, INC.,

Defendant.

Case No. 4:21-cv-00913-NKL

**JOINT MOTION AND STIPULATION TO
AMEND SCHEDULING AND JURY TRIAL ORDER**

COME NOW Plaintiffs H&R Block, Inc. and HRB Innovations, Inc. and Defendant Block, Inc., by and through their respective undersigned counsel, and hereby jointly move for the amendments described below to the Court’s Scheduling and Jury Trial Order (the “Scheduling Order”) and stipulate as follows:

1. On January 19, 2022, the Court entered the Scheduling Order, which, among other things, provided that all discovery motions must be filed on or before June 17, 2022, that Defendant’s expert designations must be served that same day, and that all discovery must be completed by July 19, 2022; established a deadline of August 9, 2022 for the filing of dispositive and *Daubert* motions; and set the case for trial during a 4-week jury docket commencing January 17, 2023 and running through February 10, 2023. (Doc. 50).

2. The parties have not previously requested any amendments or extensions of the Scheduling Order.

3. As the Court is aware, the Parties have actively litigated this case since its inception. In addition to the preliminary injunction-related and other proceedings before the

Court, outside of Court, the Parties have proceeded with discovery and additional activities in an effort to advance the case and comply with the existing Scheduling Order. Without limitation, the Parties all have served and responded to written discovery, have requested and produced documents, and have been meeting and conferring about issues that have arisen between them; and Plaintiffs served their expert designations on May 17 (in accord with the Scheduling Order).

4. As part of the Parties' recent meet-and-confer discussions, the Parties have determined and agree that an amendment of the Scheduling Order is necessary and appropriate in light of Defendant's pending appeal of the Court's April 28, 2022 Order and in order to accommodate the Parties' desire to work productively to try to address their discovery disputes before seeking the Court's intervention.

5. With respect to the appeal, on June 8, 2022, the Eighth Circuit ordered an expedited schedule that requires the Parties to submit their briefs and appendices on a shortened timeline, such that:

- a. Defendant's opening brief and appendix are due tomorrow, June 17, which is the same day the Parties' discovery motions and Defendant's expert designations also are due;
- b. Plaintiffs' brief and separate appendix are due July 15, meaning that Plaintiffs would be required to prepare their appellate filings over the same four-week period during which the Parties would also be required to take all depositions, complete all written and documentary discovery, and resolve all discovery disputes in this Court; and

- c. Defendant's response brief is due July 29, meaning that its two-week briefing period would encompass the final four days the Parties have for discovery and half of the period for briefing dispositive and *Daubert* motions in this Court.

Also, pursuant to the Eighth Circuit's Order expediting the appeal, oral argument for the appeal will be set on the Eighth Circuit's September calendar (set to convene in St. Louis September 19-23). This means that, under the current Scheduling Order, the Parties would be required to prepare to argue the appeal at the same time they also would be required to brief the dispositive and *Daubert* motions filed in this Court. And, the Parties would be required to brief those motions and otherwise proceed in this case without the benefit of any guidance the Eighth Circuit's ruling may afford.

6. In summary, the Eighth Circuit's expedited schedule (which also coincides with additional time constraints for the Parties and their counsel) requires the Parties' to focus their efforts upon briefing and preparing to argue the appeal over the next 90 days, and does not leave adequate opportunity to meet the requirements of the Scheduling Order at the same time. Thus, the Parties agree that a stay of activity in this Court is warranted during that period, followed by a brief extended period to complete discovery and resume activities toward trial.

7. Moreover, under the current schedule, the Parties would be required to file discovery motions by tomorrow, June 17. Yet, the Parties agree that further time to meet and confer and to supplement their existing discovery responses and productions is warranted and may limit the need for Court intervention. And, while the Parties do not agree on the likely outcome of the appeal, the Parties agree that the Eighth Circuit's disposition of issues presented on appeal (which include, *e.g.*, issues bearing on which marks are properly compared) may provide guidance in discovery, aid in the resolution of disputed issues, and inform the focus and

trajectory of the case. In addition, the Parties anticipate that, given the expedited schedule, the Eighth Circuit's ruling will issue relatively soon after argument is heard in September.

8. Under these circumstances, the Parties respectfully submit that an amendment of the existing Scheduling Order is necessary and appropriate. Toward that end, and in furtherance of the goals discussed above, the Parties propose that activity in the District Court, should be stayed for a period of 90 days (through September 18, 2022), and that the following amended dates should be adopted to follow that period:

| <i>Deadline</i> | <i>Current Date</i> | <i>Proposed Amended Date</i> |
|--------------------------------------------------------------------------------------------|-----------------------------------------------|-------------------------------------|
| Defendant's Expert Designations | June 17, 2022 (<i>Sch. Ord.</i> ¶ D.2.b.) | October 17, 2022 |
| Discovery Motions | June 17, 2022 (<i>id.</i> ¶ D.1.) | November 17, 2022 |
| Expert Depositions | July 19, 2022 (<i>id.</i> ¶ D.2.c.) | December 16, 2022 |
| Pretrial Discovery, Including Depositions | July 19, 2022 (<i>id.</i> ¶ D.3.) | December 16, 2022 |
| Dispositive and Daubert Motions | August 9, 2022 (<i>id.</i> ¶ E) | February 10, 2023 |
| Trial Setting | January 17, 2023 (<i>id.</i> ¶ A.1.) | On or around June 20, 2023 |
| Pretrial conference and deadlines to be reset based on new trial date (<i>id.</i> ¶¶ G-O) | | |
| Expired Pleading Deadlines would not be reset (<i>id.</i> ¶ B) | | |

9. This amendment of the Scheduling Order is not sought for any improper purpose. Rather, the Parties respectfully submit to the Court that good and exceptional cause exists for the proposed stay and schedule amendments, as described herein.

Wherefore, the parties respectfully request that the Court enter an amended Scheduling Order staying the District Court case for a period of 90 days through September 18, 2022 and adopting the amended schedule set forth above.

So stipulated and respectfully submitted,

Dated: June 16, 2022

BERKOWITZ OLIVER LLP

By: /s/ Stacey R. Gilman
Anthony J. Durone (MO Bar #43872)
Stacey R. Gilman (MO Bar # 55690)
BERKOWITZ OLIVER, LLP
2600 Grand Boulevard Suite 1200
Kansas City, Missouri 64108
(816) 561-7007
adurone@berkowitzoliver.com
sgilman@berkowitzoliver.com

DEBEVOISE & PLIMPTON LLP

David H. Bernstein (admitted *pro hac vice*)
Megan Bannigan (admitted *pro hac vice*)
Jared I. Kagan (admitted *pro hac vice*)
Marissa K. MacAneney (admitted *pro hac vice*)
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, New York 10022
(212) 909-6000
dhbernstein@debevoise.com
mkbannigan@debevoise.com
jikagan@debevoise.com
mpmacaneney@debevoise.com

ATTORNEYS FOR PLAINTIFFS

-and-

ARMSTRONG TEASDALE LLP

By: /s/ Rachel Herrick Kassabian
Darren K. Sharp (MO Bar #50841)
David Alois Jermann (MO Bar #51389)
2345 Grand Boulevard, Suite 1500
Kansas City, Missouri 64108
Telephone: (816) 221-3420
Facsimile: (816) 221-0786
dsharp@atllp.com

djermann@atllp.com

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

Margret M. Caruso (admitted *pro hac vice*)
Rachel Herrick Kassabian (admitted *pro hac vice*)
555 Twin Dolphin Drive, Suite 560
Redwood Shores, CA 94065
Telephone: (650) 801-5000
margretcaruso@quinnemanuel.com
rachelkassabian@quinnemanuel.com

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

Robert M. Schwartz (admitted *pro hac vice*)
865 S. Figueroa Street, 10th Floor
Los Angeles, CA 90017
Telephone: (213) 443-3000
robertschwartz@quinnemanuel.com

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF, which will generate and send a Notice of Electronic Filing to all counsel of record.

/s/ Stacey R. Gilman
Attorney for Plaintiffs